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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM 1976

No. 76-1632

ANNE T. HENDERSON and
HELEN T. WILKES,

Petitioners,

vs.

MANN THEATRES CORPORATION
OF CALIFORNIA, a corporation,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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II. ENFORCEMENT OF THE JOINT RESOLUTION OF 1933 DOES NOT VIOLATE THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT.

Petitioners secondly contend that continued enforcement of the Joint Resolution, in light of the PVMA, violates the due process clause of the Fifth Amendment of the United States Constitution "in that it creates an arbitrary and irrational distinction between obligees for the payment of gold or the value thereof and purchasers of gold in the absence of a contract, or, in the alternative, obligees under contracts with a gold clause, and obligees under other kinds of contracts requiring payment in gold or the value thereof (e.g., gold futures contracts)."* (Pet. p. 3)

Petitioners recognize, as they must, that this Court upheld the constitutionality of the Joint Resolution against a due process attack on two occasions — *Norman, supra,* and *Holyoke Water Power Co., supra.* In those cases, every possible constitutional argument concerning due process and equal protection was advanced by skilled attorneys representing substantial creditors and debtors, as well as by the Solicitor General of the United States. This Court definitively held that the Joint Resolution of 1933 was a lawful exercise of the Congressional power to regulate the value of money (Const., Art. I, § 8).

Petitioners contend that the decisions in *Norman* and *Holyoke Water Power Co.* "justified and rationalized the Joint Resolution as necessary to support, and prevent circumvention of, contemporaneous legislation prohibiting private possession of gold. . . . Only in light of a prohibition

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*The petition refers several times to "gold futures contracts" without defining them. Such contracts are not money debt contracts, but are obligations to deliver a specified weight of gold at a specific future date and are always classified as commodity contracts.

on holding gold did the Court in *Norman* and *Holyoke, supra,* find that the Joint Resolution is not irrational and therefore not violative of the Fifth Amendment." (Pet., pp. 9-10) Petitioners then state that the removal of all restrictions on ownership of gold by the 1973 amendment to the PVMA makes for an irrational and invidious discrimination. However, a review of the opinions in *Norman* and *Holyoke Water Power Co.* does not show that this Court's finding of constitutionality of the Joint Resolution was founded on prohibition of ownership of gold. Indeed, the first such prohibition was not enacted by Congress until some eight months after the Joint Resolution was passed. Rather, constitutionality of the Joint Resolution was based upon the premise that Congress has the power and duty to set the monetary standards of the United States by statute, and the Joint Resolution was a statutory designation of the allowable monetary standard in and after March, 1933.

Specifically, the Joint Resolution does not create an arbitrary or irrational discrimination between classes of creditors. All persons are free to deal in gold as a commodity, and thus to require delivery of gold which they have contracted to buy. No persons are free to require payment of a money obligation in American gold coin or its alleged equivalent market value as gold bullion. All citizens are in both categories. The legal and logical underpinning for this distinction was best summarized by this Court in *Holyoke Water Power Co.*:

> ". . . The Resolution touches gold as well as coin or currency whenever transactions in either are within the evil to be remedied. We learn from the preamble that 'provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amou[illegible]n money of the United States measured thereby,

while specifically repealing Sections 3 and 4 of the Gold Reserve Act of 1934. (Pet., p. 7). Those courts invoked the maxim that the expression of certain things in a statute necessarily involves exclusion of other things not expressed — *expressio unius est exclusio alterius.* See e.g., *Midland Co-op. Wholesale v. Ickes,* 125 F.2d 618, 625 (8 Cir., 1942). Nothing in petitioners' argument offsets the applicability and strength of this long accepted principle of statutory interpretation.

Lastly, petitioners contend that the PVMA legalized all "gold futures contracts" and that the rental clause in the ground lease is, in effect, a gold futures contract. (Pet., p. 7) This is simply another way of arguing that the rental clause deals with gold as a commodity. Instead, as noted above, the gold clause in petitioners' lease, as in similar contracts, sought to use gold coin minted by the United States Treasury as the measure of payment of the debt created by the lease. The Joint Resolution was intended by Congress to be the death knell of gold coinage and of any requirement of delivery of gold coins or their equivalent current value in payment of any debt. This Court held in *Norman, supra,* that the purpose of the Joint Resolution was to implement the Congressional and executive decisions to establish a monetary system not based upon gold, to remove gold as legal tender.

> "We are not concerned with consequences, in the sense that consequences, however serious, may excuse an invasion of constitutional right. *We are concerned with the constitutional power of the Congress over the monetary system of the country and its attempted frustration. Exercising that power, the Congress has undertaken to establish a uniform currency, and parity between kinds of currency, and to make that currency, dollar for dollar, legal tender for the payment of debts.* In the light of

> abundant experience, the Congress was entitled to choose such a uniform monetary system, *and to reject a dual system,* with respect to all obligations within the range of the exercise of its constitutional authority. The contention that these gold clauses are valid contracts and cannot be struck down proceeds upon the assumption that private parties, and States and municipalities, may make and enforce contracts which may limit that authority. Dismissing that untenable assumption, the facts must be faced. *We think that it is clearly shown that these clauses interfere with the exertion of the power granted to the Congress* and certainly it is not established that the Congress arbitrarily or capriciously decided that such an interference existed." (294 U.S. at 316; emphasis added.)

The Congressional intention to place all citizens under a uniform currency standard, not based on gold, is as strong today as it was in 1933. The United States continues to be engaged in a plan to phase out the special monetary character attributed to gold, both at a national and international level. Currently, with the introduction of special drawing rights, the recent gold sales by the International Monetary Fund, and the suspension of convertibility of dollars into gold by the United States, the process is nearly complete. Cong.Rec. § 6697 (Daily Ed., April 4, 1973)

Thus, the basic American monetary policy denying gold any ability to be the standard of value of our money was not affected by the removal of all restrictions on gold ownership. These monetary policies are as sound and vital today as in 1933, and continue to require prohibition of enforcement of gold value clauses such as in petitioners' ground lease.

". . . Here what was intended was to assure the payment of a money debt in dollars of a value as constant as that of gold. *Norman v. Baltimore & Ohio R. Co., supra,* p. 302; cf. *Feist v. Société Intercommunale Belge D'Electricité,* L.R. [1934] A.C. 161, 172, 173. The fact is of little moment that currency is characterized as a commodity in the verbiage of the covenant as long as it is currency. Cf. *Lipke v. Lederer,* 259 U.S. 557, 561, 562. Weasel words will not avail to defeat the triumph of intention when once the words are read in the setting of the whole transaction. So read, the end to be achieved is shown forth unmistakably as a payment, not a sale.

". . .

"A contract for the payment of gold as the equivalent of money, and *a fortiori* a contract for the payment of money measurable in gold, is within the letter of the Joint Resolution of June 5, 1933, and equally within its spirit." (300 U.S. at 336, 337.)

In the present case, of course, petitioners' gold value clause does not even use the word "commodity," and in no way is there a suggestion that the original lessor and lessee were dealing with gold as a commodity. Rather, the lease provides the creation of a debt for the use of land, and the gold value clause simply states alternative methods of payment. This provision for payment measured by 1929 gold dollars cannot be enforced and is as void under the Joint Resolution as the similar rent clause in *Holyoke Water Power Co.* See, also, *Norman v. Baltimore & Ohio R.R. Co.,* 294 U.S. 240, 302 (1935); *Guaranty Trust Co. v. Henwood,* 307 U.S. 247, 255 (1939); *Emery Bird Thayer Dry Goods Co. v. Williams,* 107 F.2d 965, 968-9 (8th Cir. 1939), *cert. den.* 309 U.S. 655 (1940).

Petitioners also refer in general to the legislative history of the 1973 PVMA amendments, contending that it "discloses a Congressional intent to permit gold to be treated as are all other goods." (Pet. pp. 6-7) Respondent does not deny that the PVMA's primary goal was to confer upon gold a status of open trading equal to that of the soybeans frequently mentioned in the petition. More to the point, however, are the statements of the sponsors of the PVMA amendments that Congress expressly intended to leave the Joint Resolution of 1933 in full effect. Compelling evidence to this effect is found in the testimony of Mr. Gonzalez, Chairman of the subcommittee in the House of Representatives that handled the amendments:

> "I want to emphasize that this would not mean that we intend to allow the writing of contracts in gold, or otherwise change the joint resolution on gold. Our intention is merely to allow individuals to buy, sell and own gold if and when it is possible to do this without sacrificing our national interest." 119 Cong.Rec. 16968 (May 29, 1973).

See, also, Cong.Rec. 16980 (May 29, 1973). Further, the various executive departments and independent agencies concerned with the monetary standards of this country have uniformly interpreted the PVMA as not repealing or modifying the Joint Resolution (Dept. of Treasury, Official Statement, Appendix B hereto; Federal Reserve Board; Federal Home Loan Bank Board). These interpretations are entitled to be given great weight by the courts. *U.S. ex rel Chapman v. Federal Power Commission,* 191 F.2d 796 (4th Cir. 1951), *aff'd,* 345 U.S. 153 (1953).

Petitioners contend that the California courts erroneously reasoned that the Congressional intention not to repeal the Joint Resolution by enactment of amendments to the PVMA was demonstrated by its silence as to the Joint Resolution,

freedom to purchase, hold and sell gold. The PVMA contained no provision alluding to the Joint Resolution, nor did it purport to restore gold coins as legal tender or to monetize gold in any other way.

However, apparently believing that the renewed right of ownership of gold restored life to the "gold value" clause in the ground lease, petitioners filed their complaint seeking recovery of $2,500 of gold coin of the United States or $19,300 in current legal tender as rent for January and February 1975. Respondent's answer denied the claim and asserted affirmative defenses of payment in full, illegality of the provision as interpreted by petitioners and impossibility of performance.

The trial court found, based upon the agreed facts, that the Joint Resolution was not repealed, either expressly or by implication, by the PVMA amendments, that the gold value clause of the ground lease is not a contract for delivery of gold bullion as a commodity but a contract for the payment of money, and that, as such, its enforcement is prohibited by the Joint Resolution. (A copy of the Findings of Fact and Conclusions of Law is attached as Appendix A.) The California Court of Appeal fully affirmed this judgment.

ARGUMENT

I. THE JOINT RESOLUTION OF 1933 WAS NOT REPEALED BY THE AMENDMENTS TO THE PAR VALUE MODIFICATION ACT.

Petitioners first contend that the Joint Resolution was expressly or impliedly repealed by the 1973 and 1974 amendments to the PVMA. This is plainly erroneous, as the courts below properly concluded.

First, there was no express repeal of the Joint Resolution in the PVMA amendments. Rather, the only express

repealer therein was of two statutes which dealt only with acquisition and use of gold (Sections 3 and 4 of the Gold Reserve Act of 1934). The Joint Resolution was not even mentioned in any PVMA amendment.

Second, there was no implied repeal of the Joint Resolution by enactment of the PVMA amendments. The two statutes deal with very different subject matters — the Joint Resolution with the demonetization of gold, the PVMA with ownership and use of gold as a commodity. Nothing is cited by petitioners, nor could it be, to demonstrate that the PVMA was intended to give gold a renewed monetary standing. Indeed, the language of the 1974 amendment to the PVMA emphasizes the distinction between private ownership of gold and government monetary standards.*

Petitioners contend that the California Court of Appeal erred in utilizing the distinction between unrestricted ownership and trading in gold as a commodity and the prohibition of gold as a monetary standard contained in the Joint Resolution (Pet. p. 6). There is no error. Such a distinction was expressly intended by Congress. The distinction between contracts treating gold as a commodity and as a monetary standard was expressly noted by this Court in cases upholding the constitutionality of the Joint Resolution. *Holyoke Water Power Co. v. American Writing Paper Co.*, 300 U.S. 324 (1937), flatly rejected the contention that a gold value clause in a lease was in effect a contract for the purchase and sale of gold, even though the clause used the term "commodity":

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* ". . . [T]his section shall take effect either on December 31, 1974, or at any time prior . . . that international monetary reform shall have proceeded to the point where elimination of regulations on private ownership of gold will not adversely affect the United States' international monetary position."

In October 1929, a 99-year ground lease of land in Los Angeles, improved by a movie theatre, was entered into between the predecessors in interest of the parties. Petitioners became the owners of the underlying ground in about 1960, and respondent became the lessee thereafter. The rental clause of the ground lease provided:

"1st - RENTAL

"The rental for such ninety-nine (99) year term shall be the sum of One Million Four Hundred Fifty-Seven Thousand Five Hundred Dollars ($1,457,500.00), which sum the lessee agrees to pay the lessors in installments as follows:

"Seven Hundred Fifty Dollars ($750.00) on the first day of each and every calendar month of said term commencing November 1, 1929, to and including May 1, 1934;

"Twelve Hundred Fifty Dollars ($1,250.00) on the first day of each and every calendar month of said term commencing June 1, 1934, to and including October 1, 2028.

"The lessee agrees to pay said rentals to the lessors in gold coin of the United States of America of the present standard of weight and fineness (one dollar containing twenty-five and eight-tenths grains of which twenty-three and twenty-two hundredths grains are fine gold) or its equivalent in lawful money of the United States of America, at such place in the City of Los Angeles, California, as the lessors may, from time to time, in writing, designate as the place for the payment of the rent. But the lessee may make such rental payments by bank check in accordance with prevailing business practices, and the place for the payment of the rent shall be at the Holly-

wood Office of California Bank in the City of Los Angeles, California, until otherwise specified by the lessors as aforesaid."

In June 1933, Congress enacted the Joint Resolution of 1933 (hereafter "Joint Resolution") as a result of the fundamental monetary change then being accomplished, popularly known as "going off the gold standard." The Joint Resolution (now 31 United States Code Section 463) provided that every provision in an obligation that purported to give the obligee the right to require payment in gold, or in an amount in money measured thereby, is against public policy, and that every obligation containing such a provision is discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender.

Respondent and its predecessors have been paying rent in legal tender in the exact amount set forth in the lease, which, since June 1, 1934, has been $1,250 per month. Petitioners accepted such amount as payment in full of the rent until January 1975, when they demanded payment in the amount of $1,250 "in gold coin of the United States of America, of the standard of weight and fineness in use on October 8, 1929 . . . , or its equivalent in lawful money of the United States of America . . ." which the petitioners contended was $9,650 in current dollars (Complt, p. 3). Respondent refused the demand and continued to pay $1,250 per month as rent.

Petitioners based their demand for American gold dollars, or an eightfold increase in current dollars, upon the passage by Congress in 1973 of amendments to The Par Value Modification Act, Public Law 93-110 (hereinafter referred to as "PVMA"). The amendments repealed provisions of the Gold Reserve Act of 1934, which had made most ownership of gold by American citizens illegal, and allowed Americans for the first time in almost 40 years complete

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IN THE

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OCTOBER TERM 1976
No. 76-1632

ANNE T. HENDERSON and
HELEN T. WILKES,

Petitioners,

vs.

MANN THEATRES CORPORATION
OF CALIFORNIA, a corporation,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

INTRODUCTION

Because there is no issue of national importance raised by petitioners' request that a writ of certiorari issue to review the decision of the California Court of Appeal (affirming the judgment entered by the trial court in favor of respondent), the petition should be denied.

OPINION BELOW

The opinion of the Court of Appeal of the State of California, Second Appellate District, is printed as Appendix B to the petition for writ of certiorari.

STATEMENT OF THE CASE

Petitioners' statement of the case is misleadingly incomplete, both in text and in quotation of the basic contractual document involved. A full summary of the agreed facts upon which the case was tried is necessary for accurate analysis of petitioners' arguments.

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obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts.' Accordingly, all such provisions are declared to be against public policy, and every obligation, heretofore or hereafter incurred, though it contain such provisions, shall be payable, dollar for dollar, in legal tender at the time of payment. *Transactions for the sale or delivery of gold for industrial purposes are not within the evil to be remedied, and so are not within the statute.* Cf. Executive Order of April 5, 1933, and August 28, 1933; Orders of the Secretary of the Treasury, December 28, 1933 and January 15, 1934; Emergency Banking Act of March 9, 1933, 48 Stat. 1, 2, § 3. An obligation to make delivery upon a *bona fide* sale is not fairly to be classified as an obligation 'payable in money' (Joint Resolution, subdivision (b)), or so we now assume. *But very definitely, the evil does include transactions whereby gold, coined or uncoined, is to be delivered in satisfaction of a debt expressed in terms of dollars, payment, not sale, being then the end to be achieved. As definitely, indeed more obviously, the evil includes transactions whereby a debt is to be discharged, not in bullion, but in dollars, if the number of the dollars is to be increased or diminished in proportion to the diminution or the increase of the gold basis of the currency. Both forms of obligation are illustrations of the very mischief that Congress sought to hit.*" (300 U.S. at 338-9; emphasis added.)

Petitioners here are in exactly the same position as the lessor in *Holyoke Water Power Co.* They desire delivery of gold, in coins or equivalent gold, in satisfaction of a debt expressed in terms of dollars, payment, not purchase of gold, being the end to be achieved. This is the very "evil" pro-

hibited by the Joint Resolution. Full legalization of ownership of gold has not placed American money back on the gold standard.

CONCLUSION

Contrary to petitioners' assertion that this is a case of first impression in the United States, it was over 40 years ago that this Court definitively answered the arguments now raised again by petitioners. The Joint Resolution was not repealed by the PVMA amendments, expressly or impliedly, and it continues to be a logical and proper exercise of the Congressional power to regulate the value of our money.

In essence, petitioners are unhappy that they do not have a possible hedge against inflation by using gold as a standard for the monetary value of the rent. But, as said by Mr. Justice Cardozo in *Holyoke Water Power Co.*:

"In last analysis, the case for the petitioner amounts to little more than this, that the effect of the Resolution in its application to these leases is to make the value of the dollars fluctuate with variations in the weight and fineness of the monetary standard, and thus defeat the expectation of the parties that the standard would be constant and the value relatively stable. Such, indeed, *is* the effect, and the covenant of the parties is to that extent abortive. But the disappointment of expectations and even the frustration of contracts may be a lawful exercise of power when expectation and contract are in conflict with the public welfare. 'Contracts may create rights of property, but when contracts deal with a subject matter which lies within the control of the Congress, they have a congenital infirmity.' *Norman v. Baltimore & Ohio R. Co., supra,* pp. 307, 308. To that congenital infirmity this covenant succumbs." (300 U.S. at 341.)

For the foregoing reasons, the petition for a writ of certiorari should be denied.

BENNETT W. PRIEST
PHILIP F. WESTBROOK

Attorneys for Respondent.

APPENDIX A

FILED
JAN 21 1976
CLARENCE E. CABELL, County Clerk
/s/ E. WALLIN
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Attorneys for Defendant Mann Theatres Corporation of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ANNE T. HENDERSON and HELEN T. WILKES, Plaintiffs, vs. MANN THEATRES CORPORATION OF CALIFORNIA, a Corporation, and DOES I through V, Inclusive, Defendants.	No. C 113 808 FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause came on regularly for non-jury trial on November 3, 1975, in Department 1 of the above entitled Court, the Honorable William P. Hogoboom, Judge presiding, plaintiffs and defendant being represented by their respective attorneys of record, the facts being fully stipulated by and between said parties, and the cause briefed, argued and submitted for decision; wherefore, the Court being fully advised in the premises, now renders its decision as follows:

FINDINGS OF FACT

1. On or about October 8, 1929, la Belle Townsend and Wilber Townsend leased to Main Holding Company, a California corporation, certain real property located at and known as 6508 Hollywood Boulevard, Los Angeles, California, under a written lease.

2. Thereafter, by mesne conveyances, the lessee's interest in said lease was duly assigned to defendant. Defendant has been the lessee of said property since on or about June 29, 1973.

3. By mesne conveyances, the lessors' interest in said lease was duly conveyed to plaintiffs as tenants in common.

4. Said lease, dated October 8, 1929, provides for rental payments for the property leased, as follows:

"1st - RENTAL

"The rental for such ninety-nine (99) year term shall be the sum of One Million Four Hundred Fifty-Seven Thousand Five Hundred Dollars ($1,457,500.00), which sum the lessee agrees to pay the lessors in installments as follows:

"Seven Hundred Fifty Dollars ($750.00) on the first day of each and every calendar month of said term commencing November 1, 1929, to and including May 1, 1934;

"Twelve Hundred Fifty Dollars ($1250.00) on the first day of each and every calendar month of said term commencing June 1, 1934, to and including October 1, 2028.

"The lessee agrees to pay said rentals to the lessors in gold coin of the United States of America of the present standard of weight and fineness (one dollar

containing twenty-five and eight-tenths grains of which twenty-three and twenty-two hundredths grains are fine gold) or its equivalent in lawful money of the United States of America, at such place in the City of Los Angeles, California, as the lessors may, from time to time, in writing, designate as the place for the payment of the rent. But the lessee may make such rental payments by bank check in accordance with prevailing business practices, and the place for the payment of the rent shall be at the Hollywood Office of California Bank in the City of Los Angeles, California, until otherwise specified by the lessors as aforesaid."

5. Since June 1, 1934, defendant and its predecessors have paid rental for the real property in the amount of $1250 each month. Said sum of $1250 was paid by defendant to plaintiffs as rent for each of the months of January and February 1975 in legal tender money of the United States. Defendant has refused to pay the sum of $1250 in gold coin of the United States of America of the weight and fineness in use on October 8, 1929 (one dollar containing twenty-five and eight-tenths grains, of which twenty-three and twenty-two hundredths grains were fine gold) as rent for either of the months of January or February 1975.

6. On or about June 5, 1933, the United States Congress enacted Section 463 of Title 31 United States Code (commonly known as the Joint Resolution of 1933), which provided in full as follows:

"Provision for payment of obligations in gold prohibited; uniformity in value of coins and currencies

"(a) Every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particu-

lar kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

"(b) As used in this section, the term 'obligation' means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term 'coin or currency' means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations. June 5, 1933, c. 48, § 1, 48 Stat. 113."

7. In September 1973, the United States Congress enacted Public Law 93-110, 93rd Congress, H.R. 6912, which provided in relevant part as follows:

"AN ACT to amend the Par Value Modification Act, and for other purposes:

". . .

"Sec. 3. (a) Sections 3 and 4 of the Gold Reserve Act of 1934 (31 U.S.C. 442 and 443) are repealed.

"(b) No provision of any law in effect on the date of enactment of this Act, and no rule, regulation, or order

under authority of any such law, may be construed to prohibit any person from purchasing, holding, selling, or otherwise dealing with gold.

"(c) The provisions of this section, pertaining to gold, shall take effect when the President finds and reports to the Congress that international monetary reform shall have proceeded to the point where elimination of regulations on private ownership of gold will not adversely affect the United States' international monetary position."

8. In July 1974, the United States Congress enacted Public Law 93-373, 93rd Congress, S. 2665, 88 Stat. 445, which provided in relevant part as follows:

"Sec. 2. Subsections 3(b) and (c) of Public Law 93-110 (87 Stat. 353) are repealed and in lieu thereof add the following:

"(b) No provision of any law in effect on the date of enactment of this Act, and no rule, regulation, or order in effect on the date sub-sections (a) and (b) become effective may be construed to prohibit any person from purchasing, holding, selling, or otherwise dealing with gold in the United States or abroad.

"(c) The provisions of subsections (a) and (b) of this section shall take effect either on December 31, 1974, or at any time prior to such date that the President finds and reports to Congress that international monetary reform shall have proceeded to the point where elimination of regulations on private ownership of gold will not adversely affect the United States' international monetary position."

Said provisions became effective on December 31, 1974.

9. The Court finds in all respects as set forth in the Conclusions of Law following these Findings of Fact.

CONCLUSIONS OF LAW

The Court concludes:

1. In all respects as set forth in the foregoing Findings of Fact.

2. Said findings having been made upon issues which are determinative of the cause, any further findings or findings upon issues other than those embraced in the foregoing findings would be immaterial and are not made for that reason.

3. Enforcement of the gold clause provision of the lease of October 8, 1929 pertaining to payment of the rent in gold coin of the United States is prohibited by the provisions of the Joint Resolution of 1933, 31 U.S.C. § 463.

4. Defendant is not obligated to make payment in gold coin of the United States of America of the weight and fineness in effect on October 8, 1929, or its equivalent in lawful money of the United States. 31 U.S.C. §§ 315b, 446, 463.

5. The Joint Resolution of 1933, 31 U.S.C. § 463, was not repealed, either expressly or by implication, by the 1973 amendment of the Par Value Modification Act, Public Law 93-110, 93rd Congress, H.R. 6912.

6. The gold clause provision of the lease of October 8, 1929 was not and is not a contract for payment in gold coin or gold bullion as a commodity, but was and is a contract for the payment of money.

7. Defendant has duly and fully performed all of the conditions of said lease of October 8, 1929 to be performed on its part, and, in particular, has fully discharged its obligation to pay rent to plaintiffs for the months of January and February 1975.

8. Defendant is entitled to judgment that plaintiffs take nothing and that defendant recover its costs herein incurred.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: JAN 21 1976.

HOGOBOOM
JUDGE

APPENDIX B

Department of the Treasury
Washington, D.C. 20220
Telephone WO 4-2041

NEWS

FOR RELEASE 3:30 P.M., EST,
MONDAY, DECEMBER 9, 1974

Statement on Gold Clause Resolution

The repeal of the restrictions on private ownership of gold effective December 31, 1974, has prompted a number of inquiries on the continuing validity of the Gold Clause Joint Resolution enacted by Congress on June 5, 1933. This statement is issued by the Treasury Department, after consultation with other concerned Government agencies, to help clarify the application of this law.

The Gold Clause Joint Resolution (31 U.S.C. 463) provides that "every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy . . . ." This law mandates that such provisions shall be discharged upon payment, dollar for dollar, in the current legal tender. It is Treasury's view that the Gold Clause Joint Resolution continues to apply after the lifting of restrictions on bullion ownership.

Under the Resolution a contract clause providing for payment in gold, or in United States dollars equivalent to a certain amount of gold, is not enforceable if the subject of the contract is something other than gold, so that gold as a commodity has no relationship to the business being transacted. In such a case, gold would be used solely for the purpose of establishing the value of the obligations. This

view is based on judicial decisions which held unenforceable a lease providing for payment in gold bullion as one method of rent settlement, since the intention of the parties by using gold in the contract was solely to stabilize the dollar value of the rent. *Holyoke Water Power Co.* v. *American Writing Paper Co.*, 300 U.S. 324 (1937); *Emery Bird Thayer Dry Goods Co.* v. *Williams*, 107 F. 2d 965 (1939). Similarly, loans or certificates of deposit repayable in gold, or in an amount of dollars measured in terms of gold, would be unenforceable.

In contrast, if gold as a commodity is the subject matter of the contract, then the Resolution would not bar enforcement according to its terms. For example, a present sale of gold bullion or coins and a sale of gold for future delivery (*i.e.*, a gold futures contract) fall outside the Resolution. A similar conclusion has been reached with respect to a contractual provision giving a shareholder, in an organization with assets consisting of gold, the right to redeem his equity, either in those assets, or in an equivalent amount of dollars at the then current market price, would be enforceable.

Contracts containing multiple currency clauses, as in the past, are unenforceable under the Resolution. The reason for this is that in the late 1930's the Supreme Court construed the Resolution to prohibit enforcement of multi-currency contracts.

Multi-currency clauses are now common in contracts in international financial markets. For example, bonds are issued and denominated in "Eurcos" which provide for payment in a number of European currencies in an amount measured by an index composed of these currencies. The Secretary of the Treasury has indicated that consideration of a change in the law at the next session of Congress

to allow American businessmen to deal in this kind of instrument would be desirable.

The United States law making gold clauses unenforceable has been in effect solely during the period in which private ownership of gold by United States citizens was prohibited. Nonetheless, there is nothing inconsistent between private ownership of gold and the Gold Clause Joint Resolution. Canada, France and Germany, for example, have for some years allowed private ownership of gold while prohibiting gold clauses.

Finally, this area of the law is subject to varying legal interpretations and, as in other cases of statutory construction, the final arbiter must be the courts.